



# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

IN THE MATTER OF THE	)	No. 62988-3-I
PERSONAL RESTRAINT OF:	)	
	)	DIVISION ONE
MARTIN JOHN HEALY,	)	
	)	UNPUBLISHED OPINION
Petitioner.	)	
	)	FILED: August 3, 2009

PER CURIAM. Martin Healy filed a personal restraint petition challenging the imposition of probation as part of his sentence for attempted second degree theft. The State now concedes that Healy is entitled to vacation of the portion of his sentence imposing probation. We accept the concession as well-taken because a sentencing court cannot require probation as part of a gross misdemeanor sentence if the court also imposes the maximum term of incarceration. State v. Gailus, 136 Wn. App. 191, 200-201, 147 P.3d 1300 (2006).

The personal restraint petition is accordingly granted. Paragraphs 2 and 3 of petitioner's sentence for attempted second degree theft in Snohomish County No. 04-1-00552-8, setting terms and conditions of probation and directing petitioner to report to the Department of Corrections for supervision, are hereby vacated. The case is remanded to the trial court for entry of an order nunc pro tunc deleting those paragraphs from the petitioner's judgment and sentence.

For the court:

Leach, J.